

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66854 / April 24, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14856

In the Matter of

**EGAN-JONES RATINGS
COMPANY and SEAN EGAN,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15E(d) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934**

I.

The Securities and Exchange Commission (“Commission”) deems it necessary for the protection of investors and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15E(d) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Egan-Jones Ratings Company (“EJR”) and Sean Egan (“Egan”) (collectively, “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

RESPONDENTS

1. EJR is a subscriber-based credit rating agency located in Haverford, Pennsylvania. On December 21, 2007, the Commission approved EJR’s application to become registered as a Nationally Recognized Statistical Rating Organization (“NRSRO”) for financial institutions, insurance companies, and corporate issuers. On December 4, 2008, the Commission approved EJR’s application for registration as an NRSRO for issuers of asset-backed securities (“ABS”) and issuers of government securities, municipal securities, or securities issued by a foreign government (“government securities”).

2. Sean Egan is the founder, president and owner of EJR. Since EJR became registered as an NRSRO, Egan has been EJR’s primary, and at times sole, analyst responsible for issuing credit ratings. Egan signed the applications for NRSRO registration and annual certifications that EJR submitted to the Commission, and provided the majority of the information contained in those submissions.

SUMMARY

3. EJR violated Exchange Act Section 15E(a)(1) and Rule 17g-1(b) thereunder when it made willful and material misrepresentations and omissions in its July 2008 application to the Commission to register as an NRSRO for issuers of ABS and government securities. In EJR's July 2008 application to register in these two additional classes, EJR falsely stated that, as of the date of its application, it had 150 outstanding ABS issuer ratings and 50 outstanding government issuer ratings. EJR further falsely stated in its application that it had been issuing credit ratings in these categories as a credit rating agency on a continuous basis since 1995. In fact, at the time of its July 2008 application, EJR had not issued – that is, made available on the Internet or through another readily accessible means – any ABS or government issuer ratings. EJR willfully made these misstatements and omissions to conceal the fact that it had no experience issuing ratings on ABS or government issuers, and therefore did not meet the requirements for registration of an NRSRO with respect to these categories. Egan signed the application on EJR's behalf, certifying that it was “accurate in all significant respects,” even though he knew that it contained these material misrepresentations and omissions.

4. EJR violated Exchange Act Section 15E(b)(2) and Rule 17g-1(f) when it made willful and material misrepresentations or omissions regarding the number of EJR's outstanding ABS and government issuer ratings, and the length of time that it had been issuing credit ratings in these categories on a continuous basis, in subsequent annual certifications submitted to the Commission. EJR willfully made these misstatements and omissions in order to maintain its registration as an NRSRO in these classes.

5. In addition, EJR falsely stated in submissions to the Commission that it was unaware whether its subscribers held long or short positions in particular securities. In fact, EJR's salespeople were aware of certain clients' holdings, and in some instances knew whether clients had long or short positions. In at least three instances, information about whether a client had a long or short position was conveyed to Egan, EJR's primary analyst.

6. EJR also violated numerous statutory provisions and Commission rules governing NRSROs. EJR failed to enforce its policies to address conflicts of interest arising from employee ownership of securities, and allowed two analysts to participate in determining the credit ratings for issuers whose securities they owned. EJR also (1) failed to make or retain a record of the procedures and methodologies it used to determine credit ratings; (2) failed to make or retain certain internal records regarding its outstanding ratings; and (3) failed to retain emails regarding its determination of credit ratings for approximately eighteen months after it became registered as an NRSRO.

7. Egan knowingly provided substantial assistance and caused EJR's misstatements. He provided inaccurate information for inclusion in EJR's applications and annual certifications and signed the applications, certifying that the information provided in them was “accurate in all significant respects,” when he knew that it was not.

8. Egan knowingly provided substantial assistance and caused EJR's violations of the conflicts-of-interest and books and records violations by failing to ensure EJR's compliance with NRSRO rules. Egan was aware of these requirements and, as EJR's president, was ultimately responsible for EJR's compliance with these provisions, yet failed to take appropriate action to ensure that EJR complied. As EJR's primary analyst, he failed to maintain the required records of

credit ratings and as EJR's president, he failed to establish procedures for record retention among the members of his staff.

FACTUAL BACKGROUND

A. The Credit Rating Agency Reform Act and Rules Governing NRSROs

9. The Credit Rating Agency Reform Act of 2006 ("Rating Agency Act"), enacted on September 29, 2006, defined the term "nationally recognized statistical rating organization" to mean a credit rating agency that: (1) issues credit ratings certified by qualified institutional buyers for certain classes of issuers; and (2) is registered with the Commission. The Exchange Act defines a credit rating agency as an entity that, among other things, is "engaged in the business of issuing credit ratings on the Internet or through another readily accessible means." Accordingly, an entity seeking registration with the Commission as an NRSRO must be a credit rating agency that issues credit ratings on the Internet or through another readily accessible means.

10. The Rating Agency Act also provided authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules for registered credit rating agencies. Under this authority, the Commission has adopted Rules 17g-1 through 17g-7 and Form NRSRO. Exchange Act Rule 17g-1(a) requires a credit rating agency applying for registration as an NRSRO to use Form NRSRO to furnish the Commission with an initial application. Section 15E(b)(1) of the Exchange Act and Rule 17g-1(e) require a firm, after becoming registered as an NRSRO, to promptly update its registration application if any of the information becomes materially inaccurate, and Section 15E(b)(2) of the Exchange Act and Rule 17g-1(f) require NRSROs to provide the Commission with an annual certification on Form NRSRO. The annual certification must contain updates of certain information, a certification that the information furnished with Form NRSRO continues to be accurate, and a list of material changes to the application for registration that occurred during the previous calendar year.

11. An applicant or NRSRO must also furnish the Commission with information on Form NRSRO regarding the procedures and methodologies that the applicant or NRSRO uses to determine credit ratings, policies and procedures to prevent the misuse of material, nonpublic information, any conflict of interest relating to the issuance of credit ratings, whether it has a code of ethics in effect, and financial information.

12. In addition to registration and annual certification requirements, NRSROs must comply with recordkeeping requirements and rules governing conflicts of interest. For example, Rule 17g-2 provides that NRSROs must create and maintain certain records, including records regarding each rating issued by the NRSRO. Rule 17g-5 prohibits an NRSRO from having certain conflicts of interest relating to the issuance or maintenance of a credit rating and requires an NRSRO to disclose and to establish and maintain written policies and procedures to address and manage other potential conflicts of interest.

B. EJR's Applications for NRSRO Registration

13. EJR submitted its initial application on Form NRSRO on August 16, 2007. In the application, EJR sought NRSRO registration for three classes of credit ratings: (i) issuers of financial institutions, brokers, and dealers; (ii) issuers of insurance companies; and, (iii) corporate issuers. EJR submitted supplements to its pending application on September 20, 2007 and November 13, 2007. Egan signed the application and supplements on EJR's behalf (collectively, "August 2007 Application"), in his capacity as president of EJR, and provided the majority of the

information contained in the August 2007 Application. On December 21, 2007, the Commission granted EJR's application.

14. On July 14, 2008, EJR submitted an application for NRSRO registration in the remaining two classes of credit ratings: (i) issuers of ABS and (ii) issuers of government securities.¹ EJR submitted a supplement to this application on September 2, 2008. As president of EJR, Egan signed the application and supplemental submission for EJR (collectively, "July 2008 Application"), and provided the majority of the information contained in the July 2008 Application. On December 4, 2008, the Commission granted EJR's application.

15. EJR submitted an annual certification to the Commission for calendar year 2007 on March 28, 2008 ("2007 Annual Certification"), an annual certification for 2008 on March 27, 2009 ("2008 Annual Certification"), an annual certification for 2009 on March 30, 2010 ("2009 Annual Certification"), an annual certification for 2010 on March 28, 2011 ("2010 Annual Certification"), and an annual certification for 2011 on March 30, 2012 ("2011 Annual Certification"). Egan signed each of these certifications, certifying that they were "accurate in all significant respects," and provided the majority of the information contained in them when, in fact, certain of the misstatements and omissions alleged herein were neither corrected nor acknowledged as incorrect as the rules required.

C. EJR's Misstatements Concerning its Experience Rating Issuers of ABS and Government Securities

16. Form NRSRO requires an applicant seeking NRSRO registration to indicate for each class of ratings: (1) the approximate number of credit ratings that it had outstanding in that class at the time of the registration application; and (2) "the approximate date the Applicant/NRSRO began issuing credit ratings as a 'credit rating agency' in that class on a continuous basis through the present."

17. Consistent with the definition of "NRSRO" in effect at the times of EJR's applications, the instructions concerning this section of Form NRSRO stated that "an Applicant/NRSRO must have been in business as a 'credit rating agency' for at least the 3 consecutive years immediately preceding the date of its application for registration as an NRSRO." The instructions further stated that to meet the definition of "credit rating agency" under the Exchange Act, "the Applicant must, among other things, issue 'credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.'"²

¹ The term "asset-backed security" is defined as "a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases." 17 C.F.R. § 229.1101(c). Securities Act Rule 191 and Exchange Act Rule 3b-19 provide that the "issuer" of an asset-backed security is the "depositor" for that asset-backed security. 17 C.F.R. § 230.191(a); 17 C.F.R. § 240.3b-19(a). Pursuant to Regulation AB, each ABS prospectus explicitly identifies the depositor on the front cover of the prospectus. 17 C.F.R. § 229.1002(a).

² Section 3(a)(61) of the Exchange Act defines a "credit rating agency" as "any person (A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company; (B) employing either a quantitative or

18. The applicant must furnish at least two qualified institutional buyer (“QIB”) certifications that address each class of credit ratings for which it is applying for registration, and those certifications must state that the QIB has “seriously considered” the credit ratings of the applicant “in the course of making some of its investment decisions” for at least three years.

19. Accordingly, an applicant seeking to become registered as an NRSRO for a class of ratings was required to have issued credit ratings in that category on the Internet or through another readily accessible means for at least three years prior to its application.

20. In its July 2008 Application, which Egan signed and certified as being “accurate in all significant respects,” EJR falsely stated that it had 150 outstanding credit ratings on issuers of ABS and 50 outstanding credit ratings on issuers of government securities. Months later, in its 2008 Annual Certification, EJR revised its number of outstanding ABS issuer ratings from 150 to fourteen and the number of outstanding government issuer ratings from 50 to nine. Egan provided these numbers to his staff for purposes of filling out the application and certification.

21. Moreover, in its July 2008 Application, EJR falsely stated that it had been issuing ratings on ABS and government issuers on a continuous basis since 1995. EJR reiterated this 1995 date in its 2008 Annual Certification. However, in its 2009 Annual Certification, EJR stated that it had been issuing ratings on issuers of ABS on a continuous basis only since December 2005 and on issuers of government securities since April 2005. EJR reiterated these 2005 dates in its 2010 and 2011 Annual Certifications.

22. In fact, at the time of its July 2008 Application and 2008 Annual Certification, EJR had never issued credit ratings on issuers of ABS or government securities on the internet or through another readily accessible means.

23. Although EJR claimed to have 150 outstanding ABS issuer ratings and 50 government issuer ratings at the time of its July 2008 Application, EJR has no contemporaneous reports, work papers, or other records showing that it had issued credit ratings on ABS or government issuers prior to July 2008. Similarly, EJR does not have reports, work papers, or other contemporaneous records showing that it had issued fourteen ABS issuer ratings or nine government issuer ratings at the time of its 2008 Annual Certification.

24. As the primary, and at times sole, research analyst at EJR throughout the entire period from 1995 through 2011, Egan knew that EJR had not been issuing ratings on issuers of ABS and government securities on a “continuous basis” since 1995 or making such ratings accessible to EJR’s subscribers.

25. EJR’s sales representatives did not market or distribute ABS or government issuer ratings to the firm’s subscribers at any time prior to the 2008 Annual Certification. By contrast, during the same period EJR’s salespeople actively marketed the firm’s ratings on corporate issuers, and EJR published these ratings on its website and distributed them to its subscribers through blast e-mails. Furthermore, apart from Egan, the other main analyst employed by EJR between October 2008 and September 2009, did not rate any ABS or government issuers and was not aware that EJR had ever issued such ratings.

qualitative model, or both, to determine credit ratings; and (C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.”

26. In addition, although EJR claimed to have significant experience rating issuers of ABS in its NRSRO application, from early 2008 through 2009, Egan and EJR engaged in discussions with at least five different third parties regarding arrangements under which these third parties would analyze or rate ABS issuers on behalf of EJR. Agreements and term sheets with two of these entities that were retained by EJR on a trial basis specifically provided for the third parties to provide ABS ratings to EJR or help EJR “develop” models or methodologies for ABS ratings.

27. EJR did not issue ratings on issuers of ABS or government securities on the internet or otherwise make such ratings readily accessible until January 2010, when Egan asked a member of his staff to post ABS and government issuer ratings on its website.

28. EJR’s misstatements concerning its experience rating issuers of ABS and government securities were material. In its application, EJR concealed the fact that it had not issued any ABS or government issuer ratings at the time of the application and therefore did not meet the requirements for registration as an NRSRO with respect to issuers in these classes. Accordingly, without EJR’s misstatements and omissions, EJR would not have satisfied the Commission’s requirements for registration as an NRSRO for issuers of ABS and government securities.

D. EJR Submitted Inaccurate QIB Certifications with its July 2008 Application

29. Form NRSRO requires applicants to submit two certifications from QIBs that address each class of credit ratings for which the applicant is seeking registration. At the time of EJR’s 2007 and 2008 NRSRO applications, a QIB was required to certify that it: (1) meets the definition of QIB; and (2) has “seriously considered” the credit ratings of the applicant in the course of making some of its investment decisions in the classes of credit ratings listed by the QIB for at least the three years immediately preceding the date of the certification.

30. The QIB certifications EJR submitted with its application for registration in the categories of issuers of ABS and government securities were inaccurate because neither QIB actually had received ratings from EJR on issuers of ABS or government securities. Moreover, one of the entities had not been an EJR client for three years as of the date of the certification.

31. Egan knew or should have known that the QIBs who submitted the certifications had not, in fact, “seriously considered” any credit ratings of EJR for ABS or government issuers because neither QIB had received such ratings. EJR and Egan did not make any effort to verify the accuracy of the forms.

E. Additional Misstatements by EJR

32. EJR inaccurately stated in its August 2007 NRSRO Application, 2007 Annual Certification, and July 2008 Application that it “does not know if a subscriber is long or short a particular security.” In fact, EJR salespeople were aware of certain clients’ holdings, and EJR even marketed a portfolio monitoring service whereby clients would be alerted to “specific names we recognize as emerging risks among your holdings.” On multiple occasions, EJR’s salespeople were informed whether clients had long or short positions in particular securities. In at least three instances, Egan received information about whether a client had a long or a short position.

33. Exhibit 5 to Form NRSRO requires an applicant or NRSRO to provide a copy of its written code of ethics in effect or a statement of the reasons it does not have a written code of ethics. EJR’s code of ethics in its November 2007 supplemental response to its initial application and its 2007 Annual Certification stated that employees were not permitted to trade in securities of

issuers rated by EJR, except in certain limited circumstances. However, this provision was missing in versions of EJR's code of ethics signed by two EJR analysts.

F. EJR's Conflict of Interest Violations

34. Exchange Act Section 15E(h)(1) requires an NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed to address and manage conflicts of interest. Rule 17g-5(c)(2) prohibits an NRSRO from issuing a credit rating when an analyst who participated in determining the rating owned the securities of the entity subject to that rating.

35. EJR violated these provisions because two EJR analysts participated in determining credit ratings for issuers whose securities they owned. In 2009, an EJR analyst participated in determining ratings on at least seventeen different issuers while owning the securities of those issuers. Subsequently, a second EJR analyst determined a credit rating of an issuer whose securities he owned. Before the report was published, Egan emailed the analyst and informed him that he should talk to EJR's compliance officer before publishing the report on the issuer, and stated that Egan, rather than the analyst, "might have to release it." EJR's compliance officer subsequently advised the analyst that he was permitted to publish the report, as long as he did not trade the security.

36. Exchange Act Rule 17g-5(a)(2) provides that an NRSRO is prohibited from having certain conflicts of interest relating to the issuance or maintenance of a credit rating, unless the NRSRO establishes, maintains, and enforces written policies and procedures to address the conflict of interest. One of those conflicts, listed in Rule 17g-5(b)(6), is allowing persons within the NRSRO to directly own the securities of an issuer or obligor subject to a credit rating of the NRSRO.

37. EJR repeatedly failed to adequately enforce its written policies and procedures to address conflicts of interest. Although EJR's code of ethics generally prohibited employees from owning securities of issuers rated by EJR, EJR did not undertake any effort to verify that employees had produced statements for all of their securities accounts, and at least one employee failed to provide statements for all of his accounts. EJR thus failed to discover until months later that this employee had traded in securities of issuers rated by EJR, in violation of EJR's conflict of interest policy.

G. EJR's Books and Records Violations

38. Rule 17g-2(a)(6) requires an NRSRO to make and retain records documenting the established procedures and methodologies used by the NRSRO for determining credit ratings, and Rule 17g-1(i) requires NRSROs to make its current Form NRSRO and certain exhibits to the Form public, including, in Exhibit 2, a general description of the procedures and methodologies. These requirements are intended to allow the Commission to determine whether the NRSRO is adhering to its policies and whether the publicly available description in the NRSRO's Form NRSRO is sufficient for users to understand the methods. EJR did not make or retain the documentation required under Rule 17g-2(a)(6). Other than the brief descriptions provided in its Form NRSRO Exhibit 2, EJR had no written procedures and methodologies for determining credit ratings.

39. Rule 17g-2(a)(2) requires an NRSRO to make and retain records of the identity of the credit analyst(s) that participated in determining a credit rating, the identity of the credit analyst(s) that approved the credit rating before it was issued, and whether the credit rating was solicited or unsolicited. EJR failed to maintain these records.

40. Rule 17g-2(b)(2) requires an NRSRO to retain all internal records used to form the basis of a credit rating issued by the NRSRO. EJR did not retain these records. EJR had no procedures for maintaining work papers used in determining credit ratings, and did not implement procedures until mid-2009. Even after 2009, EJR failed to retain individual copies of the model that was used in determining each rating, and did not retain records of manual adjustments to the model output made by analysts.

41. Rule 17g-2(b)(7) requires an NRSRO to retain all communications, including electronic communications, received or sent by the NRSRO and its employees that relate to “initiating, determining, maintaining, monitoring, changing, or withdrawing a credit rating.” EJR had no system in place to retain employee emails until June 2009 when, a few days before the Commission staff was scheduled to conduct its periodic examination of EJR, EJR hired a third-party consultant to implement an email retention system that would retain all EJR staff emails. Prior to June 2009, no system was in place to prevent employees from deleting emails, and those deleted emails were not retained.

H. Egan’s Liability

42. Egan knowingly provided substantial assistance and caused EJR to make the material misstatements and omissions in its applications and annual certifications. Egan provided the information to his staff so that they could make the submissions and knew that the information was inaccurate, yet certified that the information in the submissions was “accurate in all significant respects.”

43. Egan knowingly provided substantial assistance and caused EJR to violate the conflict-of-interest and books and records requirements. Egan failed to retain the required records for EJR’s ratings, failed to ensure that others retained the required records, and failed to institute a system for staff to do so. He failed to ensure compliance with the conflict of interest provisions by not preventing impermissible employee trading.

VIOLATIONS

44. Section 15E(d) of the Exchange Act provides that the Commission shall, by order, censure, place limitations on, suspend, or revoke the registration of any NRSRO, or with respect to any associated person, censure, place limitations on, suspend or bar such person from being associated with an NRSRO, if the Commission finds that such action is necessary for the protection of investors and in the public interest and that the NRSRO or any person associated with the NRSRO has, among other things, committed any act specified in Sections 15(b)(4)(A), (D) or (E) of the Exchange Act. These acts include that the NRSRO “willfully made or caused to be made” statements that were false or misleading in any application for registration (15(b)(4)(A)), “has willfully violated any provision of . . . this title” (15(b)(4)(D)), or “willfully aided, abetted, counseled, . . . or procured” the violation of any provision of the Exchange Act or any Exchange Act rule by any other person (15(b)(4)(E)).

45. Pursuant to Section 15E(a)(1) of the Exchange Act, a credit rating agency that elects to be treated as an NRSRO:

shall furnish to the Commission an application for registration . . . containing . . . the procedures and methodologies that the applicant uses in determining credit ratings . . . and . . . any other information and documents concerning the applicant . . . as the Commission, by

rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

46. By willfully making material misstatements and omissions in its August 2007 Application, EJR willfully violated Section 15E(a)(1) and Rule 17g-1(a), which require a credit rating agency applying for registration as an NRSRO to furnish the Commission with an initial application on Form NRSRO that follows the Form's instructions.

47. By willfully making material misstatements and omissions in its July 2008 Application for the two additional classes, EJR willfully violated Section 15E(a)(1) and Rule 17g-1(b), which require an NRSRO applying for registration in an additional class of credit ratings to furnish the Commission with an application on Form NRSRO that follows the Form's instructions.

48. By willfully making material misstatements and omissions in its annual certifications, EJR willfully violated Section 15E(b)(2) and Rule 17g-1(f), which require NRSROs to, not later than 90 days after the end of each calendar year, file with the Commission an amendment to its registration certifying that the information and documents in the application for registration continue to be accurate.

49. By willfully submitting false QIBs, EJR willfully violated Sections 15E(a)(1)(B)(ix) and 15E(a)(1)(C), which require applicants to provide written certifications from clients who had used the applicant's ratings in the specified classes.

50. By willfully failing to have employees sign the Code of Ethics on a timely basis and allowing two employees to sign a version of the Code that omitted the provision governing ownership of securities, and by failing to adequately collect and review employees' brokerage statements, EJR willfully violated Section 15E(h)(1), which requires an NRSRO to establish, maintain, and enforce written policies and procedures to address and manage conflicts of interest, and Rule 17g-5(c)(2).

51. By willfully failing to make and retain records with respect to each current credit rating, EJR willfully violated Section 17(a) of the Exchange Act and Rule 17g-2(a)(2), which require an NRSRO to make and retain such records, including the identity of the analysts that participated in determining the credit rating, the identity of the person who approved the rating, and whether the rating was solicited or unsolicited.

52. By willfully failing to make and retain a record documenting the established procedures and methodologies it uses to determine credit ratings, EJR willfully violated Section 17(a) of the Exchange Act and Rule 17g-2(a)(6).

53. By willfully failing to retain internal records, including nonpublic information and work papers, used to form the basis of a credit rating, EJR willfully violated Section 17(a) of the Exchange Act and Rule 17g-2(b)(2).

54. By willfully failing to retain internal and external communications, including electronic communications received and sent by the NRSRO and its employees that relate to initiating, determining, maintaining, changing, or withdrawing a credit rating, EJR willfully violated Section 17(a) of the Exchange Act and Rule 17g-2(b)(7).

55. EJR willfully violated Section 15E(h)(1) of the Exchange Act and Rule 17g-5(c)(2) by issuing or maintaining a credit rating where an analyst involved in determining the credit rating, or a person responsible for approving the credit rating, owns securities in the rated entity.

56. As a result of the conduct described above, Egan willfully made, or caused EJR to make, material misstatements in its Form NRSRO; and caused or willfully aided, abetted, counseled, commanded, induced or procured EJR's violations of Sections 15E and 17(a) of the Exchange Act and Rules 17g-1, 17g-2, and 17g-5.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary for the protection of investors and in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate against Respondents pursuant to Section 15E(d) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 15E(a)(1), 15E(b)(2), 15E(h)(1) and 17(a) of the Exchange Act and Rules 17g-1(a), 17g-1(b), 17g-1(f), 17g-2(a)(2), 17g-2(a)(6), 17g-2(b)(2), 17g-2(b)(7) and 17g-5(c)(2), whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within

the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary